

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FILED

OCT 08 2019

Clerk, U.S. District Court
District Of Montana
Missoula

WAYNE DALE KELLBERG,

Plaintiff,

vs.

RICKY SHELBOURNE,

Defendant.

Cause No. CV 19-159-M-DLC-KDL

FINDINGS AND
RECOMMENDATION
OF U.S. MAGISTRATE JUDGE

For the fifth time, Plaintiff Kellberg has filed a civil complaint against Defendant Shelbourne. Kellberg accuses Shelbourne of inflicting “pain and suffering” at “Howies and Michelle Powells place” in Missoula from 2016 to 2019. *See* Compl. (Doc. 2) at 4–5 ¶¶ III–IV. One section of the form complaint asks Kellberg, “What are the facts underlying your claim(s)?” The form gives three examples: “What happened to you? Who did what? Was anyone else involved? Who else saw what happened?” *See id.* at 4 ¶ III(C). Kellberg gives no response to any of these questions.

Kellberg knows how to allege facts to support his claims. He did so in CV 18-176-M, CV 18-204-M, and CV 19-37-M. He knows courts do not act on claims that have already been decided. *See, e.g.,* Order (Doc. 4) at 2, No. CV 18-204-M-DLC (D. Mont. Feb. 8, 2019); Order (Doc. 4) at 2, No. CV 19-50-M-DLC (D.

Mont. May 15, 2019). And he knows the Court cannot act on allegations that do not exist, because he made none in CV 18-106-M and CV 19-50-M.

Kellberg's motion to proceed in forma pauperis should be denied because his complaint is frivolous. If he timely pays the full filing fee, the Court will consider whether and how he may proceed.

Kellberg is not entitled to object to this Recommendation. *See Minetti v. Port of Seattle*, 152 F.3d 1113, 1114 (9th Cir. 1998) (per curiam).


Based on the foregoing, the Court enters the following:

RECOMMENDATION

1. Kellberg's motion to proceed in forma pauperis should be DENIED.
2. The clerk should be directed to close the civil case if Kellberg does not pay the full filing fee of \$400.00 within 14 days of the District Court's Order.

Kellberg must immediately advise the Court of any change in his mailing address. Failure to do so may result in dismissal of this action without notice to him.

DATED this 8th day of October, 2019.


Kathleen L. DeSoto
United States Magistrate Judge